

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LATASHA GENISE MORSON,

Defendant-Appellant.

UNPUBLISHED

May 29, 2003

No. 238750

Oakland Circuit Court

LC No. 1999-167284-FC

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Following a nonjury trial, defendant Latasha Morson was convicted of conspiracy to commit armed robbery,¹ armed robbery,² and two counts of possession of a firearm during the commission of a felony.³ The trial court sentenced Morson to concurrent terms of eight to twenty years in prison for the conspiracy and armed robbery convictions, to be served consecutively to the mandatory two-year term for felony-firearm. Morson appeals her sentences as of right. We reverse and remand for resentencing. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Morson conspired with Iesha Northington to commit an armed robbery. She provided the weapon to Northington, who robbed Deborah Sevakis of her purse at gunpoint, while Morson waited in a car nearby. When Northington fled the scene, James Bish tried to stop her and Northington shot him. Morson was not charged with any crime for Bish's shooting.

II. Standard Of Review

Morson challenges the scoring of the statutory sentencing guidelines. "A sentencing court has discretion in determining the number of points to be scored provided that evidence of

¹ MCL 750.157(a).

² MCL 750.529.

³ MCL 750.227b.

record adequately supports a particular score.”⁴ “Where effectively challenged, a sentencing factor need be proved only by a preponderance of the evidence.”⁵ A scoring decision “for which there is any evidence in support will be upheld.”⁶

III. Scoring The Statutory Sentencing Guidelines

Offense variable (OV) 1, aggravated use of a weapon, is to be scored at twenty-five points if a firearm “was discharged at or toward” another person or a victim was cut or stabbed.⁷ Morson was assessed twenty-five points for the shooting of Bish. However, in cases involving multiple offenders, “if 1 offender is assessed points for the presence or use of a weapon, all offenders shall be assessed the same number of points.”⁸ Northington was assessed fifteen points for the robbery offense, presumably for pointing a firearm,⁹ and there is no indication or argument that Northington’s score was incorrectly calculated.¹⁰ Therefore, Morson should have been assessed fifteen points.

OV 3, physical injury to victim, is to be scored at twenty-five points if a victim suffered a life-threatening or permanently incapacitating injury.¹¹ Morson was assessed twenty-five points for the shooting of Bish. As with OV 1, multiple offenders are to receive the same score.¹² Northington received a score of zero for the robbery.¹³ Therefore, Morson should have been assessed zero points.

OV 9, number of victims, is to be scored at ten points if two to nine victims were involved.¹⁴ The instructions state that “each person who was placed in danger of injury or loss of life” is counted as a victim.¹⁵ Morson was assessed ten points. Sevakis and Bish were both placed in danger during the criminal episode. However, only Sevakis was placed in danger during the robbery. Bish was not in the immediate vicinity during the robbery¹⁶ and the robbery

⁴ *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

⁵ *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991).

⁶ *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

⁷ MCL 777.31(1)(a).

⁸ MCL 777.31(2)(b).

⁹ MCL 777.31(1)(b).

¹⁰ See *People v Libbett*, 251 Mich App 353, 367; 650 NW2d 407 (2002).

¹¹ MCL 777.33(1)(c).

¹² MCL 777.33(2)(a).

¹³ MCL 777.33(1)(f).

¹⁴ MCL 777.39(1)(c).

¹⁵ MCL 777.39(2)(a).

¹⁶ See, e.g., *People v Kimble*, 252 Mich App 269, 274; 651 NW2d 798 (2002), lv gtd ___ Mich ___ (2003) and *People v Day*, 169 Mich App 516, 517; 426 NW2d 415 (1988).

was complete by the time he intervened.¹⁷ Moreover, the instructions do not indicate that “the entire criminal transaction” is to be considered in scoring this variable as do, for example, those for OV 14.¹⁸ Accordingly, we conclude that Morson should have been assessed zero points for one victim.¹⁹

In conclusion, had the guidelines been correctly scored, Morson’s minimum sentence range would have been 51 to 85 months.²⁰ Because Morson’s eight-year minimum sentence exceeded the guidelines, we find that resentencing is required.

Reversed and remanded for resentencing. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio

¹⁷ *People v Randolph*, 466 Mich 532, 543-544; 648 NW2d 164 (2002).

¹⁸ MCL 777.44(2)(a).

¹⁹ MCL 777.39(1)(d).

²⁰ MCL 777.62.